IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATIONL NO. 3761 OF 2007

MOHAMMED SALEEM VALI MOHD.
QURESHI ... APPLICANT.

VS.

THE STATE OF MAHARASHTRA
(AT THE INSTANCE OF NIJAMPURA
POLICE STN.) & 1 ANR. ... RESPONDENTS.

MR. MAJEED MEMON I/B. MR. PRAKASH WAGH FOR THE APPLICANT.

MR. D.P.ADSULE APP FOR THE STATE.

MR. ARJUNWADKAR FOR THE COMPLAINANT.

MR. R.S.TADVI, ACP, THANE DIVISION IS PRESENT.

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CORAM : A.A. Sayed, J.

DATE : November 16, 2007.

[VACATION COURT]

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P.C.

1. By consent taken up for hearing and final disposal.

2. I have heard the learned Counsel for the applicant Mr. Majeed Memon, Mr. Arjunwadkar for the

Complainant and Mr. Adsule APP, for the State. The reply filed by the learned APP is taken on record.

3. The applicant seeks a direction from this Court that he may be permitted to attend the meeting of the Bhiwandi Nizampura City Mahanagarpalika which is scheduled to be held on 17.11.2007 at 4.00 p.m. According to the applicant, if he does not attend the meeting, he would be disqualified from continuing to be a member of the Corporation.

4. The learned APP submits that the applicant is in custody for offences punishable under Section 302 and 120-B of the Indian Penal Code, in connection with murder of his political opponent. It is further submitted that there are about 10 cases pending against the applicant and if the applicant is allowed to attend the meeting, it may create law and order problem.

5. It is urged by the learned Counsel for the applicant that the applicant would be disqualified to continue as a member of the Corporation under provisions of section 11(c) of the Bombay Provincial Municipal Corporation Act, 1949. The said provision reads thus :-

> **"11. Disabilities from continuing as councillor** : A Councillor shall cease to hold office as such if at any time during his term of offence he,-

(a)....

(b)....

(c) absents himself from, or is unable to attend, the meetings of the Corporation during six successive months from any cause whatever, whether approved by the Corporation or not ; or

(d)...."

6. The learned Counsel for the applicant further submits that the period of six months will come to an end on 13th December, 2007 and after 17th November, 2007, no further meeting is to be held. He further submits that the applicant was declared to be elected as a Member of the Corporation on 28.5.2007. As against this, the learned APP submits that on the same day, he was arrested on the Charge of murder of his political opponent.

7. The learned Counsel for the applicant Mr. Majeed Memon makes a statement that if the applicant is allowed to attend the meeting on 17.11.2007 at 4.00 p.m., he would only go to the Corporation and sign the Roster so as to avoid his disqualification and he will not participate in the proceedings of the meeting. He further makes a statement that the applicant will not

meet or talk to any of his supporters if he is permitted to attend the meeting in the premises or precinct of the Corporation and place of detention.

8. In the facts and circumstances of the case the statements made by the learned Counsel for the applicant are accepted and I permit the applicant to attend the meeting only for the purpose of signing the roster as suggested by the learned Counsel for the applicant. It is further directed that the applicant shall deposit a sum of Rs. 5000/- (Rs. five thousand only) with the Nizampura Police Station, Bhiwandi towards the expenses of the police escort.

9. The Respondents are directed to take the applicant to Bhiwandi Nizampura Mahanagarpalika, Bhiwandi on 17.11.2007 to attend the meeting at 4.00 p.m. on that day with adequate police escort and after the applicant signs the roster, he shall be taken back to the premises where he is detained.

10. The learned APP submits that Mr. R.S. Tadvi, ACP, Thane Division is personally present in Court and he will be informed of this Order.

11. It is made clear that in the event of any law and Order problem the Police Authorities shall be at liberty to take appropriate steps as they deem fit.

12. It is further made clear that this order shall not be a precedent in any manner and in the event any such Application being made in future by the applicant, the same shall be considered on its own merits.

13. In the circumstances aforestated, nothing survives in the petition and the petition stands disposed of.

14. Parties to act on ordinary copy of this Order duly authenticated by the Sheristedar/ P.A. of this Court.

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[A.A.Sayed, J.]